

1 Joseph M. Alioto (SBN 42680)  
Theresa D. Moore (SBN 99978)  
2 Jamie Miller (SBN 271452)  
ALIOTO LAW FIRM  
3 One Sansome Street, Suite 3500  
San Francisco, California 94104  
4 Telephone: (415) 434-8900  
Facsimile: (415) 434-9200  
5 Email: jmliller@aliotolaw.com  
Email: tmoore@aliotolaw.com  
6

7 Lingel H. Winters, Esq. (State Bar No. 37759)  
LAW OFFICES OF LINGEL H. WINTERS  
8 275 Battery Street, Suite 2600  
San Francisco, California 94111  
9 Tel: (415) 398-2941  
Fax: (415) 393-9887  
10 Email: sawmill2@aol.com

11 Attorneys for Plaintiffs  
And All Others Similarly Situated  
12 [ADDITIONAL COUNSEL APPEAR ON  
LAST PAGE]  
13

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **OAKLAND DIVISION**

17 MELVIN SALVESON, an individual,  
EDWARD LAWRENCE, an individual  
18 DIANNA LAWRENCE, an individual  
and WENDY M. ADAMS, an individual on  
19 behalf of themselves and those similarly  
situated,

20 Plaintiffs,

21 v.

22 JP MORGAN CHASE & CO; J.P. MORGAN  
BANK, N.A.; BANK OF AMERICA  
23 CORPORATION; BANK OF AMERICA  
N.A.; CAPITAL ONE F.S.B.; CAPITAL  
24 ONE FINANCIAL CORPORATION;  
CAPITAL ONE BANK; HSBC FINANCE  
25 CORPORATION; HSBC BANK USA, N.A.;  
HSBC NORTH AMERICAN HOLDINGS,  
26 INC.; HSBC HOLDINGS, PLC,

27 Defendants.  
28

Case No: 4:13-cv-05816-SBA

**CLASS ACTION**

**PLAINTIFFS' OPPOSITION AND  
OBJECTION TO DEFENDANTS' REQUEST  
FOR JUDICIAL NOTICE IN SUPPORT OF  
THEIR MOTION TO DISMISS COMPLAINT  
AND TO ADMISSION OF THE MERCHANTS'  
COMPLAINT IN EVIDENCE**

Judge: Hon. Sandra Brown Armstrong  
Date: July 15, 2014  
Time: 1:00 p.m.  
Courtroom: 1, 4th Floor

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1 Plaintiffs object to Defendants' Request For Judicial Notice of the Merchants' Second  
2 Consolidated Amended Class Action Complaint in *Payment Card Interchange Fee And Merchant*  
3 *Discount Antitrust Litigation* 1:05-md-1720-JG-JO (the "Merchants' Complaint") and to its  
4 admission in evidence on the grounds of lack of relevance, lack of foundation and hearsay. Fed. R.  
5 Ev. 401, 403, 801. Defendants' Motion to Dismiss is limited to the issues of (1) AGC standing and  
6 (2) standing under the Illinois Brick doctrine based on the allegations in the instant Complaint  
7 (Def.'s Brief p. 4, lines 4-22.)

8 Since the merchants have been held to lack standing to sue under the Sherman Act by the  
9 Ninth Circuit in *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042 (9th Cir. 2008) and the Second Circuit  
10 in *Paycom Billing Servs., Inc. v. MasterCard Int'l*, 467 F.3d 283, 286-87 (2d Cir. 2006), cited by  
11 defendants, the Merchants' Complaint has no relevance. See footnote 9 of Defendants' Brief, which  
12 also states: "*See Interchange MDL*, 2013 WL 6510737, at \*13(noting uncertainty that merchants  
13 could establish direct purchaser status)."

14 Defendants' citation of *Kendall, supra*, and *Paycom, supra*, establishes that the Merchants'  
15 Complaint is inadmissible for lack of relevance and lack of foundation. Thus, not only have  
16 Defendants failed to affirmatively show any relevance or foundation for admission of the Merchants'  
17 Complaint, but by their own briefing, they have established that the Merchants' Complaint is not  
18 relevant and lacks foundation.

19 Judicial notice may be denied where the material is not sufficiently relevant to the issues  
20 raised in the instant Complaint. *Hart v. Parks* (9th Cir. 2006) 450 F.3d 1059, 1063 fn. 2; *Great*  
21 *Basin Mine Watch v. Hankins* (9th Cir. 2006) 456 F.3d 955, 975-976; *Cervantes v. Country-wide*  
22 *Home Loans, Inc.* (9th Cir. 2011) 656 F.3d 1034, 1041 fn. 1. Judicial notice may not be taken of a  
23 matter that is not beyond reasonable dispute, such as the Merchants' Complaint. *Lee v. City of Los*  
24 *Angeles* (9th Cir. 2001) 250 F.3d 668, 689.

25 Plaintiffs object to Defendants' Request for Judicial Notice and the Merchants' Complaint on  
26 the grounds of lack of relevance, lack of foundation and hearsay.

27 ///

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1 Defendants' Request For Judicial Notice should be denied and/or the Merchants' Complaint  
2 ruled inadmissible.

3 Respectfully Submitted,

4 **ALIOTO LAW FIRM**

5 Dated: May 15, 2014

6 By: /s/ Joseph M. Alioto

7 JOSEPH M. ALIOTO

8 Attorneys for Plaintiffs

9 **LAW OFFICES OF LINGEL H. WINTERS**

10 Dated: May 15, 2014

11 By: /s/ Lingel H. Winters

12 LINGEL H. WINTERS

13 Attorneys for Plaintiffs  
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27  
28

**PLAINTIFF'S COUNSEL**

Joseph M. Alioto, SBN 42680  
Theresa D. Moore, SBN 99978  
Jaime Miller  
ALIOTO LAW FIRM  
225 Bush Street, 16th Floor  
San Francisco, California 94104  
Telephone: (415) 434-8900  
Facsimile: (415) 434-9200  
Email: jmliller@aliotolaw.com  
Email: tmoore@aliotolaw.com

Jeffery K. Perkins, SBN 57996  
LAW OFFICES OF JEFFERY K. PERKINS  
1550-G Tiburon Boulevard, Box 344  
Tiburon, California 94920  
Telephone: (415) 302-1115  
Facsimile: (415) 435-4053  
Email: jefferykperkins@aol.com

John H. Boone SBN 44876  
LAW OFFICE OF JOHN H. BOONE  
4319 Sequoia Dr.  
Oakley, California 94561  
Telephone: (415) 317-3001  
Email: deacon38@gmail.com

Lawrence G. Papale SBN 67068  
Law Offices of Lawrence G. Papale  
The Cornerstone Building  
1308 Main Street, Suite 117  
St. Helena, California 94574  
Telephone: (707) 963-1704  
Email: lapapale@papalelaw.com

Lingel H. Winters, SBN 37759  
LAW OFFICES OF LINGEL H. WINTERS  
275 Battery St. Suite 2600  
San Francisco, California 94111  
Telephone: (415) 398-2941  
Facsimile: (415) 393-9887  
Attorneys for Plaintiff

Theodore Schwartz  
Schwartz & Schwartz  
7751 Carondelet Avenue, Suite 204  
Clayton, Missouri 63105  
Telephone: (314) 863-4444  
Facsimile: (314) 862-4357  
Email: Theodore@schwartz-schwartz.com

**ECF ATTESTATION**

I, Lingel H. Winters, am the ECF User whose ID and Password are being used to file this:

**PLAINTIFFS' OPPOSITION AND OBJECTION TO DEFENDANTS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF THEIR MOTION TO DISMISS COMPLAINT AND  
TO ADMISSION OF THE MERCHANTS' COMPLAINT IN EVIDENCE**

In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Joseph M. Alioto concurred in  
this filing.

**LAW OFFICES OF LINGEL H. WINTERS**

Dated: May 15, 2014

By: /s/ Lingel H. Winters

LINGEL H. WINTERS

Attorneys for Plaintiffs